

MASSACHUSETTS

Public Employee Retirement Administration Commission

5 Middlesex Avenue, 3rd Floor

Somerville, MA 02145

(617) 666-4446

Fax: (617) 628-4002

www.state.ma.us/PERAC

M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Proposed Regulation Amendments

DATE: January 6, 2000

Enclosed for your review is a copy of the proposed regulations, which have been filed with the Office of the Secretary of State, in accordance with G.L. c. 30A. Please note that a series of public hearings will be held on the following dates and locations:

- **January 14, 2000 at the Springfield State Office Building, 436 Dwight Street, Springfield, Room 130, From 1:00 To 3:00.**
-
- **January 18, 2000 at the Plymouth Library, 132 South Street, Plymouth, Fehlow Meeting Room, From 1:00 To 3:00.**
- **January 20, 2000 Public Employee Retirement Administration Commission, 5 Middlesex Avenue, 3rd Floor, Somerville, Training Room, From 10:00 To 12:00.**
- **January 21, 2000 McCormack Building, One Ashburton Place, Boston, Conference Room 3, From 1:00 To 3:00.**

You are encouraged to attend and participate at all or any of these hearings. The Commission will accept written comments regarding the proposed regulations through February 4, 2000. Comments may be sent to the Public Employee Retirement Administration Commission, 5 Middlesex Avenue, Somerville, Ma 02145.

840 CMR 6.00: STANDARD RULES FOR DISCLOSURE OF INFORMATION

Section

- 6.01: Definitions
- 6.02: Purpose of Standard Rules
- 6.03: Privacy Standards
- 6.04: Custodian; Designation; Duties and Responsibilities; Fees
- 6.05: Notice and Report to the ~~Division of~~ Public Employee Retirement Administration Commission
- 6.06: Access to Retirement Files by ~~The the Division of~~ Public Employee Retirement Administration Commission,
~~Retirement Boards, and Medical Panel Physicians~~ and the Office of the Attorney General
- 6.07: Access to Retirement Files by Members and their Representatives
- 6.08: Access to Retirement Files by Employers
- 6.09: Access to Retirement Files by Legal Process
- 6.10: Access to Retirement Files by the General Public
- 6.11: Access to Public Records; Promptness of Access; Requests for Public Records
- 6.12: Records of Retirement Board Meetings
- 6.13: Advisory Opinions
- 6.14: Objections and Administrative Appeals

840 CMR 6.00 is the standard rule for disclosure of information promulgated by the ~~Commissioner of~~ Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, §§ 50(a) and 50(n). Except as otherwise provided by the ~~Commissioner~~, by supplementary rules of a particular retirement board approved by the ~~Commissioner~~ pursuant to 840 CMR 14.02, or by statute, 840 CMR 6.00 shall govern the release of all records in the custody of any retirement board in the Commonwealth. The release of records in the custody of retirement boards subject to M.G.L. c. 66A shall be governed by M.G.L. c. 66A, 801 CMR 2.00 and 3.00 and 840 CMR 6.00.

6.01: Definitions

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 6.00 shall have the meanings assigned them by M.G.L. c. 4, § 7(26), M.G.L. c. 30A, §§ 11A and 11A½, M.G.L. c. 32, M.G.L. c. 34, §§ 9F and 9G, M.G.L. c. 39, §§ 23A and 23B, and M.G.L. c. 66A, § 1, and if no meaning is so assigned, they shall have their ordinary meanings.

6.02: Purpose of Standard Rules

The purpose of 840 CMR 6.00 is to establish uniform standards and procedures to be applied by retirement boards in maintaining and disclosing records, particularly records containing personal data. A retirement board shall provide access to public records as required by M.G.L. c. 66, § 10 and shall protect personal data which it holds as required by M.G.L. c. 66A and 840 CMR 6.00.

6.03: Privacy Standards

(1) Without the written consent of the data subject or his or her authorized representative, no retirement board shall disclose to any person outside of the board any personal information contained in a personnel or medical file which may be identified or associated with the data subject or other materials or data pertaining to a specifically named individual if such disclosure may constitute an unwarranted invasion of personal privacy unless such disclosure is required by Federal or State statute or regulation.

(2) In determining whether personal information other than that contained in a personnel or medical file is a public record, a retirement board shall balance the seriousness of any invasion of privacy which release of the record may cause against the public's right to know about the

contents of the record, and shall consider whether the public interest in obtaining the information substantially outweighs the seriousness of any potential invasion of privacy.

(3) In general, the determination whether release of materials or data may constitute an unwarranted invasion of personal privacy must be made on a case by case basis. However, the board shall not release records containing intimate details of a highly personal nature, such as information related to alcohol or drug problems, mental health problems, or the like, without the written consent of the data subject or an order of a court of competent jurisdiction.

(4) In making the determination whether the privacy exemption to the public records law limits disclosure of information a retirement board shall observe the following principles:

- (a) Information relating to a member's name, address, and type of retirement (e.g. superannuation, ordinary disability, accidental disability, veteran status, etc.) is generally a public record;
- (b) Medical files or information relating to a specifically named individual, including, the medical reason for a disability retirement, shall not be considered a public record;
- (c) Other material or data relating to a specifically named individual is generally not a public record if the information contained in the record relates to intimate details of a highly personal nature.

(5) Any record pertaining to meetings of a retirement board including records pertaining to the financial operation of the board shall be presumed to be a public record unless the record is exempt from disclosure by 840 CMR 6.12.

(6) If a record contains both public and non-public information, the retirement board shall release as a public record any segregable portion of such record which is an independent public record.

(7) Retirement board studies and reports based upon personal data held by the board may be disclosed if all personal identifiers have been removed and no data subject can otherwise be identified by the nature, content or context of such studies or reports.

6.04: Custodian; Designation; Duties and Responsibilities; Fees

(1) Designation. Each retirement board shall designate a person to serve as Custodian of all records which the retirement board holds.

(2) Duties and Responsibilities. The Custodian shall:

- (a) maintain custody of and control over all records held by the retirement board.
- (b) take all reasonable precautions to protect the records from fire, theft, flood, natural disaster, unauthorized removal or other security hazard;
- (c) inform members and staff of the retirement board of the provisions of 840 CMR 6.00;
- (d) insure that the number of duplicate retirement files is maintained at an absolute minimum and that any such duplicate files are maintained consistent with the requirements of 840 CMR 6.00;
- (e) develop and implement a plan for the expungement of obsolete records with approval, where applicable, of the Records Conservation Board established by M.G.L. c. 30, § 42, and the Supervisor of Public Records pursuant to M.G.L. c. 66, § 8;
- (f) maintain to the maximum extent feasible a complete and accurate record, which shall be deemed part of the data to which it relates for all purposes under 840 CMR 6.00, of every access to or use of a member's retirement file, including the identity of all persons and organizations to whom such access has been granted ~~and their declared intentions regarding the use of the records disclosed~~, except that no record need be maintained of any such access to or use by members or staff of the retirement board, medical panel members, or representatives of the ~~Division of~~ Public Employee Retirement Administration Commission;
- (g) make the initial determination as to whether any record requested is a public record and as to whether access to the record requested is mandated by M.G.L. c. 4, § 7(26), or by other applicable law or regulation;

6.04: continued

- (h) assess and collect fees as provided in 840 CMR 6.04(3);
- (i) receive objections as provided in 840 CMR 6.14;
- (j) answer questions; and
- (k) make available on request copies of M.G.L. c. 4, § 7(26), M.G.L. c. 66, § 10 (the Massachusetts Freedom of Information Act), applicable provisions of M.G.L. c. 66A (the Massachusetts Fair Information Practices Act), and 801 CMR 2.00 and 3.00, applicable provisions of M.G.L. c. 30A, §§ 11A and 11A½ (the Open Meeting Law governing state agencies), M.G.L. c. 34, §§ 9F and 9G (the Open Meeting Law governing county agencies), and M.G.L. c. 39, §§ 23A and 23B (the Open Meeting Law governing municipal agencies) and 840 CMR 6.00.

(3) Fees. The Custodian may charge a reasonable fee for copies of any record consistent with the fee schedule issued by the Supervisor of Public Records pursuant to 950 CMR 32.02(5). A fee reasonably related to cost may also be charged for making a search for the requested record provided that no charge may be made for a search requiring less than 20 minutes to complete. The retirement board may waive the reproduction fee or the search fee if, in its judgment, such waiver would be in the public interest.

6.05: Notice And Report to the Division of Public Employee Retirement Administration

The retirement board shall ~~by July 1, 1985, and upon the subsequent~~any establishment, termination, or change in character of a retirement file system submit a report to the ~~Division of~~Public Employee Retirement Administration Commission regarding the retirement file system it operates. Such report shall include, but not necessarily be limited to the following information:

- (1) The name of the system and the name and address of the Retirement Board;
- (2) The nature and purpose of the system;
- (3) The identification of the types, categories, uses and sources of data held in the system;
- (4) The approximate number of individuals about whom data are held in the system;
- (5) Whether and to what extent the data are held in computerized form;
- (6) A description of each person and organization having access to the system;
- (7) A description of the policies and practices of the board with regard to data maintenance, retention, and disposal;
- (8) A description of the manner in which any individual, who believes that data about him are held in the system, may have a search made, and, if such data are so held, may inspect, copy, and object to it as provided in 840 CMR 6.00;
- (9) A description of other actions taken to comply with 840 CMR 6.00; and
- (10) A statement that this report is available to the public upon request.

6.06: Access to Personal Data in Retirement Files by the ~~Division of~~Public Employee Retirement Administration Commission, Retirement Boards, ~~and~~Medical Panel Physicians and the Office of the Attorney General

- (1) The ~~Commissioner~~Commission, staff and representatives of the ~~Division of~~Public Employee Retirement Administration Commission, members and staff of the retirement board, and medical panel physicians shall have access to personal data in retirement files to the extent that their duties require such access.

(2) Whenever a data subject files or threatens to file a complaint against the Commonwealth, including executive offices, agencies, or departments, or against any employee or officer of the Commonwealth, concerning a matter within the scope of the office or employment with the Commonwealth, any personal data concerning the data subject that is in the possession of the retirement board or the Public Employee Retirement Administration Commission that is relevant to the determination of the issues in dispute shall be provided to the Office of the Attorney General upon request. Such requests must be in writing and contain a clear description of the data sought, the reason for the request and the intended use of the data. In supplying such data, the retirement board or the Commission must redact any data concerning non-parties. Any personal data indicating a violation of law may be referred to the Office of the Attorney General for investigation and enforcement. Any assistant attorney general may further disclose the personal data to the extent deemed necessary to defend the Commonwealth, officer or employee effectively against the data subject's claim. No data may be released where prohibited by statute.

6.07: Access to Personal Data in Retirement Files by Members

(1) Request for Notification of Holding. The Custodian, upon request of a member or his or her authorized representative, shall inform the member in writing, within 20 days of receipt of a request, whether the retirement board holds, or has held within the previous 24 months, any personal data concerning the member.

(2) Access to Personal Data. A member or his or her authorized representative shall be granted access to all personal data in the member's retirement file except where prohibited by law or judicial order and except as provided in 840 CMR 6.07(3). In making any disclosure of personal data to a member pursuant to 840 CMR 6.07, the Custodian may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the member is not. The Custodian shall not rely on any exception contained in M.G.L. c. 4, § 7(26) to withhold from a member personal data otherwise accessible to him or her under 840 CMR 6.00.

(3) Investigative Data. Except as specifically authorized by the Custodian with the approval of the retirement board, a member or his or her authorized representative shall not be granted access to any information in the member's retirement file which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. Such information may be withheld for the time it takes the ~~retirement board~~ investigatory agency to complete its investigation and commence an administrative or judicial proceeding on its basis; ~~or for one year from the commencement of the investigation, whichever occurs first.~~ 840 CMR 6.07(3) shall not affect any rights to access the member may have under administrative or judicial discovery procedures.

(4) Notification of Denial of Access. If access to personal data is denied, the Custodian shall notify the member in writing of such denial, shall state the reasons for such denial, and shall describe the right to appeal provided in 840 CMR 6.14(2).

6.08: Access to Retirement Files by Employers

(1) An employer may be granted access to personal data in a member's retirement file bearing on the member's present, former or prospective employment by the employer.

(2) An employer desiring such access shall make a request on ~~Form 6-1~~ the appropriate form stipulating that the employer shall not disseminate any personal data received except as permitted by M.G.L. c. 66A, where applicable, or 840 CMR 6.00.

(3) If access to personal data is denied, the Custodian shall notify the employer in writing of such denial, the reasons therefor, and the right to appeal as provided in 840 CMR 6.14(2).

6.09: Access to Retirement Files by Legal Process

Unless otherwise prohibited by law or judicial order, upon receipt of a subpoena duces tecum, or other order of a court or administrative agency of competent jurisdiction directing the retirement board to produce personal data in a member's retirement file, the Custodian shall notify the member of the demand no later than the next business day following the day on which the subpoena or other document is served and shall not produce any records in response to the demand unless the member has been notified in reasonable time to seek to have the process quashed. If the member is properly notified and if the process is not quashed, the Custodian shall produce a copy of the requested records as ordered by the Court or agency, and shall advise the Court or agency of the requirements of 840 CMR 6.00.

6.10: Access to Personal Data in Retirement Files by the General Public

- (1) Any person may request access to public records in a member's retirement file pursuant to the procedures provided in 840 CMR 6.11 and M.G.L. c. 66, § 10.
- (2) If the custodian determines that data requested are not a public record, he or she shall deny access unless such dissemination of the record is:
 - (a) authorized by a statute or regulation consistent with the purposes of M.G.L. c. 66A or 840 CMR 6.00;
 - (b) requested by an employer consenting to observe the provisions of M.G.L. c. 66A applicable to holders of personal data as provided in 840 CMR 6.08;
 - (c) approved in writing by the member, and the member has a right to access to the requested records by law or 840 CMR 6.00; or
 - (d) requested by a physician treating a data subject during a medical or psychiatric emergency which precludes the data subject from approving disclosure; provided that notice of disclosure shall be given to the data subject upon termination of the emergency.
- (3) Any person seeking access to personal data that is not subject to release in a member's file pursuant to 840 CMR 6.10(1)(c) shall submit a written request to the Custodian, on Form 6-2, stating the name of the member and specifying the information sought and the intended use of the information, and agreeing to limit the use of the information to that stated in the statement of intended use. Upon receipt of a request, the Custodian shall send a letter to the member describing these procedures, explaining that the member is under no legal obligation to consent to the release of the information, and enclosing a copy of the Form 6-2 the request. If the member consents in writing to the requested access, the custodian shall grant access as requested. If the member does not respond, or does not so consent, the Custodian shall deny access. The Custodian shall furnish the member, upon request, a copy of any personal data that has been disclosed.

6.11: Access to Public Records; Promptness of Access; Requests for Public Records

- (1) Access to Public Records. The Custodian shall, at reasonable times and without unreasonable delay, permit any public record under his or her inspection to be inspected and examined by any person, under such supervision as may be appropriate, and shall furnish one copy thereof upon payment of a reasonable fee as set forth in 840 CMR 6.04(3). The Custodian shall also permit any person to search the public records of the retirement board in a reasonable manner that does not interfere with the normal functions of the board.
- (2) Promptness of Access. The Custodian shall establish and maintain routine procedures for prompt production of public records to persons requesting them. The Custodian shall respond to every request for a public record within three ten days and, if the request is granted, produce copies of the public records requested within ten days of receipt of the request. If the request is denied, the Custodian shall inform the person requesting the record of the reasons for such denial in writing and the right to appeal provided in 840 CMR 6.14, M.G.L. c. 66, § 10(b), and 950 CMR 32.04.

(3) Request for Public Records. A person may request records either orally or in writing. A retirement board shall require a written request for records only when there is a substantial doubt as to whether the record requested is a public record, and shall not require such a written request merely to delay production. The Custodian shall provide forms ~~(Form 6-3)~~ for requesting records but any written request is sufficient as long as the record is adequately described therein. Any person seeking access to a public record shall provide a reasonable description that enables the Custodian to identify and locate the record promptly. Superior knowledge of the contents of retirement board files on the part of the Custodian shall be used to facilitate rather than hinder compliance with requests for public records.

6.12: Records of Retirement Board Meeting

(1) The minutes and other records of each retirement board meeting shall be a public record and shall be available upon request as provided herein; provided, however, that the records of any executive session may remain secret as long as disclosure may defeat the lawful purposes for which the session was closed, but no longer.

(2) The retirement board shall periodically review its records of executive sessions to determine whether such records must remain secret. When the retirement board decides that a previously secret executive session record or portion thereof need no longer remain secret, it shall note such decision in the minutes of the retirement board meeting at which such decision is made.

6.13: Advisory Opinions

~~(1) Supervisor of Public Records. The Custodian or retirement board may seek an advisory opinion from the Supervisor of Public Records with respect to any question concerning the application of M.G.L. c. 4, § 7(26) or of M.G.L. c. 66, by sending a written request to the Supervisor of Public Records, Office of the State Secretary, One Ashburton Place, Room 1701, Boston, MA 02108, as provided in 950 CMR 32.03.~~

~~(2) Commissioner of Public Employee Retirement. Any Custodian or retirement board may request an advisory opinion from the Commissioner with respect to any question concerning the application of 840 CMR 6.00 to any matter by sending a written request to the Commissioner of Public Employee Retirement, Division of Public Employee Retirement Administration, One Ashburton Place, Room 1101, Boston, MA 02108.~~

6.14: Objections and Administrative Appeals

(1) Objection to Custodian. Any member or his or her authorized representative who objects to the collection, maintenance, dissemination, use, accuracy, completeness, type of, or denial of access to, personal data in his or her retirement file, may file an objection thereto with the Custodian. Upon receipt of such objection, the Custodian shall investigate the validity of the objection. If, after the investigation, the objection is found to be meritorious, the Custodian shall correct the contents of the data or the methods for holding or the use of such data. If the objection is found to lack merit, the Custodian shall provide the member the opportunity to have a statement reflecting his or her views recorded and disseminated with the data in question. In either event, the Custodian shall notify the member in writing of his or her decision within 30 days following receipt of the objection.

~~(2) Appeals to the Commissioner. Any person aggrieved by a decision of the Custodian under 840 CMR 6.00 may appeal the decision to the Commissioner of Public Employee Retirement by a written request to the Commissioner at the address listed in 840 CMR 6.13(2). The Commissioner shall review the request and shall make his or her decision promptly. In reviewing the request, the Commissioner may request such information from any person and hold such hearing as will enable him or her to decide the matter.~~

- (32) Appeals to the Supervisor of Public Records. In the event any Custodian denies access to a record claimed to be a public record, the person making the request may appeal the matter to the Supervisor of Public Records as provided by M.G.L. c. 66, § 10(b) and 950 CMR 32.04.
- (43) Judicial Relief. The administrative remedies provided in 840 CMR 6.14 shall not limit administrative or judicial remedies provided in M.G.L. c. 66, § 10, M.G.L. c. 214, § 3B, or any other statute or regulation.

REGULATORY AUTHORITY

840 CMR 6.00: M.G.L. c. 7, § 50; M.G.L. c. 32, §§ 6 and 21.

840 CMR 7.00: STANDARD RULES FOR ELECTIONS

Section

- 7.01: General Provisions
- 7.02: Election Officer; Appeals to Board
- 7.03: Notice of Elections
- 7.04: Nominations
- 7.05: Election by Declaration
- 7.06: Official Election Ballots
- 7.07: Elections Conducted by Mail or at Polling Place
- 7.08: Absentee Ballots
- 7.09: Tabulation of Ballots
- 7.10: Election Results
- 7.11: Preservation of Ballots
- 7.12: Simultaneous Elections
- 7.13: Terms

7.01: General Provisions

(1) 840 CMR 7.00 is the standard rule for elections promulgated by the ~~Commissioner of~~ Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, § 21. Except for elections in county retirement systems, which shall be governed by the provisions of M.G.L. c. 32, §§ 20(3)(b) and 20(3)(h), and except as otherwise provided by the ~~Commissioner~~, by supplementary rules of a particular retirement board approved by the ~~Commissioner~~ pursuant to 840 CMR 14.02, or by statute, 840 CMR 7.00 shall govern all elections of elected ~~retirement-board~~ members held under the supervision of ~~the-a retirement board~~ or under the supervision of the Pension Reserve Investment Management Board.

(2) Unless a different meaning is plainly required by the context, the term "member", as used in 840 CMR 7.00, means member in service where the elected member is elected from members in service and means member in or retired from service where the elected member is elected from members in or retired from service.

(3) The elected retirement board member shall be elected by the members of the retirement system from among their number. One elected PRIM Board member shall be an active or retired member of the State Retirement System and shall be elected by the members in or retired from the State Retirement System. The other elected PRIM Board member shall be an active or retired member of the Teachers' Retirement System and shall be elected by the members in or retired from the Teachers' Retirement System. Members inactive, as defined by M.G.L. c. 32, § 3(1)(ii), shall have the right to vote in board elections

(4) If otherwise eligible, board staff may be elected to a board.

7.02: Election Officer; Appeals to Board

The ~~retirement-board~~ shall designate an Election Officer, who may be a member of the board, who shall assist the board in supervising the election and shall determine all matters relating to the election. Any person aggrieved by a determination of an Election Officer may appeal to the board. The ~~retirement-board~~ may promulgate supplementary rules governing the election which shall take effect as approved by the ~~Commissioner~~ pursuant to 840 CMR 14.02.

7.03: Notice of Elections

The ~~retirement-board~~ shall provide reasonable notice of the election not less than 90 days prior to the date of the election. Notice shall state the time, place and manner of the election and shall describe nomination and election procedures including, if the election is conducted at a polling place, procedures for voting by absentee ballot.

- (1) Notice shall be mailed to each member of the appropriate system, or
- (2) Notice shall be mailed to each retired member of the appropriate system and be posted in at least three appropriate public locations:
 - (a) within the jurisdiction of the system, or
 - (b) where a system includes more than one governmental unit, within the jurisdiction of each governmental unit.

7.04: Nominations

Any member of the ~~retirement~~-appropriate system may qualify as a candidate by filing with the ~~retirement~~-board a nomination paper or papers, containing the signatures and addresses of at least 20 members of the system. Nomination papers, in blank, shall be made available to candidates at least 90 days prior to the date of the election. The nomination paper or papers, containing the necessary number of qualified signatures and addresses shall be filed no later than 45 days prior to the date of the election. If the ~~retirement~~-board determines that a candidate has filed nomination papers containing less than the required number of qualified signatures, the ~~retirement~~-board shall declare the nomination papers invalid and shall notify the candidate of its determination.

7.05: Election by Declaration

If the ~~retirement~~-board determines that only one candidate has been nominated, the board shall declare said candidate to be the elected member of the board, no election shall be held, and said candidate shall take office and serve in all respects as though he or she had been elected by election.

7.06: Official Election Ballot

If the ~~retirement~~-board determines that more than one candidate has been nominated, the board shall immediately prepare an official election ballot. Qualified candidates shall be listed on the official ballot in an order determined by a random drawing of the names of the candidates. If the incumbent elected member is nominated, he or she shall be identified as the incumbent on the official ballot. The official ballot shall state the length of the term for which each candidate is running.

7.07: Elections Conducted by Mail or at a Polling Place

Elections shall be conducted either entirely by mail or at a polling place open for not less than ten hours, the time and place to be determined by the ~~retirement~~-board. In elections conducted at a polling place, members shall cast their votes on the official ballot in person at the polling place except as provided in 840 CMR 7.08.

7.08: Absentee Ballots

In elections conducted at a polling place members retired from service may vote by absentee ballot and an absentee ballot shall be mailed to each such member with notice of the election pursuant to 840 CMR 7.03. A member in service may, upon timely request, vote by absentee ballot only if he or she:

- (a) will be absent from the city or town where the polling place is located during the hours that it will be open;
- (b) will be unable to cast his or her vote in person on the day of the election for reasons of religious belief; or
- (c) will be unable to cast his or her vote in person at the polling place by reason of temporary physical disability.

Requests for absentee ballots shall be in writing and shall be filed no later than the day before the election or such earlier time provided by supplementary rules of the board approved by the Commissioner pursuant to 840 CMR 14.02. Absentee ballots shall be counted only if received by the ~~retirement~~-board no later than the time fixed for the closing of the polls on the day of the election.

7.09: Tabulation of Ballots

Ballots shall be tabulated only by persons designated by the ~~retirement~~ board under the direction of the Election Officer. The ~~retirement~~ board shall notify each candidate of the time and location of the tabulation of the ballots and shall permit all candidates, or their representatives, to be present at the tabulation.

7.10: Election Results

The ~~retirement~~ board shall notify each candidate, in writing, and shall give public notice of the results of the election within seven days after the election.

7.11: Preservation of Ballots

All ballots received by the ~~retirement~~ board, including those determined to be invalid, shall be preserved by the ~~retirement~~ board for 90 days.

7.12: Simultaneous Elections

~~Retirement~~ Boards may hold a simultaneous election for the two elected members if the term of each elected member has expired or if both elected positions are vacant and if the two terms are equal. The board shall provide two separate ballots.

7.13: Terms

The term of the elected member of the ~~retirement~~ board shall be for not more than three years. The elected member shall serve until the qualification of their successor. In the event of a vacancy, a new election shall be held to fill a vacancy as soon as is practical and the member elected shall serve for either the unexpired portion of the vacant term or for a three year term.

REGULATORY AUTHORITY

840 CMR 7.00: M.G.L. c. 7, § 50; M.G.L. c. 32, §§ 6 and 21.

Section

9.01: Approval Required; Exceptions

9.02: Notice to Commissioner

9.03: Benefit Calculations

9.01: Approval Required; Exceptions

(1) No decision to grant an application for retirement shall be sent to a member or beneficiary unless the Public Employee Retirement Administration Commission approves the decision pursuant to M.G.L. c. 32, § 21 or no action is taken by the Commissioner:

- (a) within 30 days of the date the Commissioner is notified of a decision granting an application for disability retirement; or
- (b) within 90 days of the date the Commissioner is notified of a decision granting any other application for retirement.

(2) In the event the Commissioner takes no action on a decision granting an application for retirement for superannuation within 90 days of notice of the decision, the board may, pursuant to M.G.L. c. 32, § 98 or 99 request the treasurer to make advance payments to the member as determined by the board subject to the final determination by the Commissioner. In the event a member receives an amount in excess of the sum later approved by the Commissioner, the member shall refund the excess or the board may deduct the excess from the member's future monthly payments.

9.02: Notice to the Commissioner

Notice to the Commissioner of a decision granting an application for retirement shall include a copy of the decision and all documentary evidence in the record that may be of assistance to the Commissioner including, without limitation, the following:

- (1) If the application is for superannuation retirement:
 - (a) the superannuation retirement allowance form ~~(Form 9-1)~~;
 - (b) the superannuation calculation form ~~(Form 9-2 or 9-3, as applicable)~~; and
 - (c) a copy of the member's deduction cards.
- (2) If the application is for disability retirement:
 - (a) the transmittal to the Commissioner ~~(Form 10-12)~~;
 - (b) all documents and information described in 840 CMR 10.13(1)(a)1.;
 - (c) the disability retirement calculation form(s) ~~(Form 9-2, 9-3 and/or 9-4, as applicable)~~; and
 - (d) a copy of the member's deduction cards.
- (3) If the application is for accidental death benefits:
 - (a) the transmittal to the Commissioner ~~(Form 10-12)~~;
 - (b) the accidental death calculation form ~~(Form 9-4)~~;
 - (c) a statement of the facts found by the retirement board;
 - (d) all descriptions of the accident;
 - (e) all descriptions of the member's duties;
 - (f) all documents prepared by the beneficiary in connection with the application;
 - (g) all documents prepared by the employer in connection with the application;
 - (h) a copy of the member's death certificate; and
 - (i) any available medical evidence, including the original medical records and any medical autopsy or evaluation reports of physicians employed by the board to make an independent judgment based on available medical information;

9.02: continued

- (4) If the application is for veteran's benefits:
 - (a) the veteran's retirement allowance form ~~(Form 9-5)~~;
 - (b) all documents and information establishing the applicant's status as a veteran; and
 - (c) if the application seeks non-contributory retirement under M.G.L. c. 32, §§ 56 and 60, all documents and information establishing whether the applicant's employment included any work for pay on or before June 30, 1939.

9.03: Benefit Calculations

- (1) Except as provided by 840 CMR 9.03(2), all benefit calculations for retirement allowances granted under the provisions of M.G.L. c. 32 shall be forwarded to the Commission~~er~~ for approval in accordance with 840 CMR 9.02.
- (2) Any retirement board may perform benefit calculations on an automated system approved by the Commission~~er~~. Except as provided by 840 CMR 9.03(8), individual benefit calculations performed on an automated system approved for performing such calculations shall be considered approved and need not be forwarded to the Commission~~er~~ for approval.
- (3) Any board may apply for approval of an automated benefit calculation system by submitting a letter describing the system together with the documentation for all system computer programs, a copy of system procedures and samples of all categories of calculations to be performed on the system. Upon receipt of a request for approval of an automated benefit calculation system, the Commission~~er~~ shall inform the retirement board of the protocol necessary to approve such system. No automated benefit calculation system shall be considered approved unless the board has performed the established protocol. No change shall be made in an approved automated system without the approval of the Commission~~er~~.
- (4) Automated benefit calculation systems, and changes in approved systems, will generally be approved if:
 - (a) System computer programs have the capability of performing benefit calculations and storing, retrieving and printing both detailed and summary information for all calculations performed including, for each calculation, the member's:
 - name;
 - social security number;
 - sex;
 - creditable service;
 - final average salary;
 - date of birth;
 - date of retirement;
 - retirement type and option;
 - group;
 - beneficiary information (name, birthdate and relationship);
 - veteran status;
 - retirement allowance amount;
 - pension amount;
 - annuity amount;
 - dependency allowance;
 - worker's compensation information, (if any).
 - (b) System procedures, including training and support of system operators, are designed to minimize the risk of error and loss of data.
 - (c) System and non-system categories of benefit calculations are clearly identified and provision is made for submitting any non-system categories of calculations to the Commission~~er~~ in accordance with 840 CMR 9.03(1).

(5) The Commission~~er~~ may approve automated benefit calculation systems for all benefit calculations or limit approval to specific categories of calculations. If system approval is limited to specific categories of benefit calculations, all other calculations shall be forwarded to the Commissioner for approval in accordance with 840 CMR 9.03(1).

(6) Every retirement board using an automated benefit calculation system, shall biannually submit, based on a schedule determined by the Commission~~er~~, a summary report, including a representative sample of at least ~~five~~twenty percent of all benefit calculations performed on the system during the preceding six months, and describing any system changes under consideration by the board.

(7) The Commission~~er~~ shall, from time to time, audit the performance of each approved automated benefit calculation system to determine the accuracy of calculations and whether the system meets requirements for continued system approval. For this purpose the Commission~~er~~ shall have access to all system records and may examine all calculations or a representative sample of calculations performed on the system.

(8) If the Commission~~er~~ determines at any time that an approved automated benefit calculation system is performing inaccurate calculations or otherwise fails to meet requirements for continued system approval, or if a retirement board fails to comply with any of the requirements of 840 CMR 9.03, the Commission~~er~~ may suspend or revoke approval of the automated benefit calculation system in whole or in part. In this event all benefit calculations with respect to which approval is suspended or revoked shall be performed manually and shall be forwarded to the Commissioner for approval in accordance with 840 CMR 9.03(1) until such time as the automated system is again approved by the Commission~~er~~.

REGULATORY AUTHORITY

840 CMR 9.00: M.G.L. c. 7, § 50; c. 32, § 6 and 21.

840 CMR 11.00: SERVICE AFTER AGE 70

Section

11.01: Notice to Members

~~11.02: Annual Application; Medical Examination and Report; Decision~~~~11.03~~02: Deductions After Age 70; Election~~11.04~~03: Effect on Retirement Benefits

840 CMR 11.00 is the standard rule for service after age 70 promulgated by the ~~Commissioner of Public Employee Retirement~~ Administration Commission pursuant to M.G.L. c. 7, § 50. Except as otherwise provided by the Commissioner, by supplementary rules of a particular retirement board approved by the Commissioner pursuant to 840 CMR 14.02, or by statute, 840 CMR 11.00 shall govern the procedures of all retirement boards relating to service after age 70.

11.01: Notice to Members

Not more than 180 nor less than 120 days before the last day of the month in which a member in service in ~~Group 1~~ attains the age of 70, the retirement board shall estimate the member's option (a), (b) and, if sufficient information is available, (c) retirement benefits as of age 70 and shall notify the member of the estimate and procedures for continuing in service after age 70. The board shall also supply the member with the appropriate form on which to choose whether to continue to have deductions made from regular compensation until the date of retirement as prescribed by 840 CMR 11.02.

~~11.02: Annual Application; Medical Examination and Report; Decision~~

~~(1) A member in service in Group 1 may request designation of a physician to determine whether the member is mentally and physically capable of performing the duties of the member's office or position after the age of 70 by filing an application on Form 11-1 together with a medical questionnaire on Form 11-2. Both forms shall be filed at least 90 days before the last day of the month in which the member attains age 70. Thereafter, both forms shall be filed at least 90 days before the last day of the member's month of birth for each year the member elects to continue in service after attaining age 70. Late filing may be accepted by the board on a showing by the member of good cause or excusable neglect.~~

~~(2) Upon receipt of an application to continue in service after age 70 (Form 11-1) and medical questionnaire (Form 11-2), the retirement board shall designate an impartial physician to examine the member. The retirement board shall thereupon send the physician a copy of the medical questionnaire and a blank form certificate of capability (Form 11-3), and shall notify the member of the physician's name, address and telephone number.~~

~~(3) The member shall schedule the medical examination with the designated physician, and shall be responsible for all fees and expenses related to the examination. Examinations shall be conducted at least 45 days before the last day of the member's month of birth provided that the board may authorize later examination on a showing of good cause or excusable neglect by the member.~~

~~(4) Within ten days after completing the examination, the physician shall report the results of the examination to the retirement board and shall certify on Form 11-3 whether the member is mentally and physically capable of performing the duties of the member's office or position.~~

~~(5) Promptly upon receipt of the physician's report, and no later than the last day of the member's month of birth, the retirement board by vote shall decide whether to grant the member's application. If the board decides that the member is mentally and physically capable of performing the duties of the member's office or position, the member shall continue in service for 12 months from the last day of the member's month of birth. If the board decides that the member is mentally and physically incapable of performing the duties of the office or position, the member shall be retired on the last day of the member's month of birth.~~

~~11.02:~~ continued

~~(6) In the event that the retirement board makes no decision by the last day of the member's month of birth, the member may be continued in service by the employer as authorized by M.G.L. c. 32, § 91, for no more than 120 days or 960 hours in the aggregate, pending decision by the board. If the member is not continued in service by the employer, or if the board has made no decision within the period of service authorized by M.G.L. c. 32, § 91, the member shall be suspended from service pending decision by the board. The decision of the board when made shall be effective as of the last day of the member's month of birth and the member shall continue in service or be terminated as prescribed by 840 CMR 11.02(5) provided that no member shall be entitled to compensation or other benefits for any period during which he or she was suspended from service pending decision by the board.~~

11.0302: Deductions After Age 70; Election

~~(1) Any member of the state employees' retirement system, the teachers' retirement system or any system which accepts the provisions of M.G.L. c. 32, § 22D or St. 1987, c. 697, § 107, who is authorized to continue in service after age 70 pursuant to 840 CMR 11.02(5), who chooses to continue in service after age 70 may elect to have deductions made from regular compensation until the date of retirement. Upon receipt of an initial application to continue in service after age 70 pursuant to 840 CMR 11.02(1) The retirement board shall provide the member with Form 11-4 the appropriate form on which the member may elect to have deductions made after age 70. Form 11-4 This form shall be completed and filed by the member with the retirement board within 15 working days of the board's decision to allow the member to continue in service after age 70 pursuant to 840 CMR 11.02(5) notice to the member or the member's 70th birthday, whichever is later. If Form 11-4 this form is not timely filed, no deductions shall be made after age 70 except as provided by 840 CMR 11.03 (2).~~

~~(2) Any member of the state employees' retirement system or the teachers' retirement system who was authorized to continue in service after age 70 on January 12, 1988 and any member of a system which accepts the provisions of St. 1987, c. 697, § 107 who was authorized to continue in service after age 70 on the date of such acceptance may elect any time prior to retirement to have deductions made from regular compensation until the date of retirement. The retirement board shall promptly notify all such members of their rights under 840 CMR 11.03. Any such member who elects to have deductions made shall deposit into the annuity savings fund the amount of deductions that would have been made if the member had elected to have deductions made at age 70 but no interest shall be required on such amount.~~

~~(3)~~ (2) An election to have deductions made after age 70 shall be final and deductions shall not thereafter be discontinued for any active member.

11.0403: Effect on Retirement Benefits

~~(1) No additional creditable service shall accrue to a member continuing in service after age 70 but interest shall continue to be credited to the member's account during the period of such service.~~

~~(2)~~ (1) Except as provided by 840 CMR 11.0402(3), no deductions shall be made from the regular compensation of a member continuing in service after age 70 and the retirement allowance shall be calculated based on average annual rate of regular compensation received prior to age 70.

(3) For members who timely so elect pursuant to 840 CMR 11.0302, deductions shall be made from regular compensation until the date of retirement and the retirement allowance shall be calculated based on average annual rate of regular compensation including compensation received after age 70.

11.0403: continued

(4) No member shall be required to elect a retirement option pursuant to M.G.L. c. 32, § 12 until termination of employment.

~~(5) The retirement allowance of a member continuing in service after age 70 shall be determined pursuant to M.G.L. c. 32, §§ 12 and 90G½ with the following adjustments to reflect deductions made and interest credited to the member's annuity account after age 70:~~

~~*Option A.* No adjustment to total retirement allowance, the annuity is based on the member's accumulated deductions plus interest at the member's date of retirement;~~

~~*Option B.* The total retirement allowance shall be the allowance payable at age 70 under Option B using the member's accumulated total deductions at age 70. The annuity shall be determined at the member's actual retirement age based on the member's accumulated deductions including interest paid on any additional deductions for the period between age 70 and the member's retirement date. The pension shall be the difference between the total retirement allowance in accordance with Option B and the annuity at the member's actual retirement age;~~

~~*Option C.* The total retirement allowance shall be the member's age 70 Option C allowance using the age of the beneficiary when the member was age 70. The annuity is based on the member's accumulated deductions plus interest at the member's date of retirement and the member's actual age at retirement. The reduction factor is to be applied to the annuity to obtain the Option C annuity is the same as that used in determining the allowance.~~

~~(6)~~(5) If a member dies after age 70 but before termination, the member's spouse shall be entitled, if otherwise eligible pursuant to M.G.L. c. 32, to the benefits that would have been payable if the member had retired on the date of death and elected Option C.

~~(7)~~(6) Upon the decision of a member to terminate service, the member shall file a retirement application with the retirement board and the retirement allowance shall be calculated pursuant to 840 CMR 15.04.

REGULATORY AUTHORITY

840 CMR 11.00: M.G.L. c. 7, § 50; c. 32, § 21.

840 CMR 12.00: SERVICE BETWEEN AGE 65 AND 70

Section

12.01: Notice to Members

~~12.02: Annual Certification of Member's Capability~~~~12.03: Appointing Authority Request for Medical Examination~~~~12.04~~02: Continuing Contributions~~12.05~~03: Effect on Retirement Benefits~~12.06~~04: Continuation of Service After Age 70

840 CMR 12.00 is the standard rule for service between age 65 and 70 promulgated by the ~~Commissioner of Public Employee Retirement Administration~~ Commission pursuant to M.G.L. c. 7, § 50 and St. 1987, c. 415. Except as otherwise provided by the ~~Commissioner~~, by supplementary rules of a particular retirement board approved by the ~~Commissioner~~ pursuant to 840 CMR 14.02, or by statute, 840 CMR 12.00 shall govern the procedures of all retirement boards relating to service between age 65 and 70.

12.01: Notice to Members

(1) The retirement board shall, not less than 180 days prior to the month during which a member of the system classified in Group 2 or Group 4 reaches age 65, obtain from the department head of the department in which the member is employed a statement that includes a description of the member's duties and the title of the office or position held by the member.

(2) Not more than 180 nor less than 120 days before the last day of the month in which a member in service in Group 2 or Group 4 attains age 65 the retirement board shall determine whether the member is employed in an occupation or position for which age is not a bona fide occupational qualification as provided by St. 1987, c. 415 or regulations of the personnel administrator issued pursuant thereto.

(3) Except as provided in 840 CMR 12.01(4), a member classified in Group 2 or Group 4 may elect to remain in service after age 65 if the member is mentally and physically capable of performing the duties of the member's office or position.

(4) No such member may continue in service after age 65 if the member is in an occupation or position classification for which the personnel administrator determines by regulation that age is a bona fide occupational qualification or is in one of the following occupations or position classifications unless the personnel administrator determines by regulation that age is not a reasonably necessary bona fide occupational qualification:

(a) uniformed member of a paid fire department;

(b) uniformed member of a police department, ~~the police force of the metropolitan district commission, the police force of the Massachusetts Bay Transportation Authority, or the capitol police;~~

~~(c) member of the state police detectives appointed under M.G.L. c. 22, § 6;~~

~~(d)~~(c) member of the ~~uniformed branch of the registry of motor vehicles or department of~~ fisheries and wildlife, as determined by the personnel administrator;

~~(e)~~(d) correctional officer;

~~(f)~~(e) permanent crash crewman, crash boatman, fire controlman, or assistant fire controlman employed at the General Edward Lawrence Logan International Airport.

(5) If the board determines that a member is in an occupation or position classification that permits the member to continue in service after age 65, the board shall notify the member and shall provide an estimate of benefits as of age 65 to which the member would be entitled if the member were to retire at age 65. ~~The notice shall be accompanied by a Form 12-1 that the member shall complete and return to the retirement board prior to the last day of the month in which the member attains age 65 if the member elects to continue in service after age 65.~~

(6) If the board determines that the member is in an occupation or position classification which requires that the member retire at age 65, the board shall notify the member of the date the member is required to retire.

12.02: Annual Certification of Member's Capability

~~(1) Any member in service in Group 2 or Group 4 who is eligible to continue in service after age 65 and elects to do so shall certify to the retirement board annually that the member continues to be mentally and physically capable of performing the duties of the member's office or position. Such certification shall be filed with the retirement board each year not less than 30 days before the member's birth date.~~

12.03: Appointing Authority Request for Medical Examination

~~(1) The appointing authority of any member continuing in service after age 65 may require the member to be examined by an impartial physician designated by the retirement board to determine if the member is mentally and physically capable of performing the duties of the member's office or position.~~

~~(2) The appointing authority may request designation of an impartial physician to determine continuing capability at any time by filing a Form 12-2 with the retirement board. The request for designation of a physician shall be accompanied by a detailed description of the duties the member is required to perform in the member's office or position. No more than one request for designation of a physician with the respect to a member shall be accepted in any 12 month period.~~

~~(3) Upon receipt of a completed Form 12-2 accompanied by a description of the member's duties, the retirement board shall notify the member of the request and shall require the member to complete a medical questionnaire on Form 12-3 within 14 days of receipt of the form.~~

~~(4) Upon receipt of completed Form 12-3, the retirement board shall designate an impartial physician to examine the member. The retirement board shall provide the physician with copies of the appointing authority's request and the accompanying description of duties (Form 12-2), the medical questionnaire (Form 12-3) and a physician's certification form (Form 12-4) to be completed by the designated physician. The retirement board shall notify the member of the name, address and telephone number of the physician designated to examine the member, and shall require the member to arrange for the examination to be conducted within 15 days of receipt of the notice. The retirement board shall be responsible for all fees and expenses related to the examination of a member under the provisions of 840 CMR 12.03.~~

~~(5) The member shall be required to attend the examination but, where good cause is shown for failure to attend an examination, the examination may be rescheduled. If a member refuses to arrange for or attend any examination required by 840 CMR 12.03 the member shall be retired for superannuation.~~

~~(6) Within ten days after completing the examination, the physician shall report the results of the examination to the retirement board and shall certify on Form 12-4 whether the member is mentally and physically capable of performing the duties of the member's office or position.~~

~~(7) At the next regularly scheduled retirement board meeting after receipt of a completed physician's certificate (Form 12-4), the board shall review the physician's certificate. If the physician's certificate indicates that the member is mentally and physically capable of performing the duties of the member's office or position, the member may elect to remain in service and the board shall so notify the member and the appointing authority. Otherwise, the member shall be retired for superannuation effective as of the date of the board meeting or on the last day of the month during which the member reaches age 65, whichever is earlier, and the board shall so notify the member and the appointing authority.~~

~~(8) A member retired on the basis of a physician's certificate under 840 CMR 12.03 shall be retired for superannuation and shall not be considered to be disabled for retirement purposes.~~

12.0402: Continuing Contributions

Deductions shall be made from the regular compensation received by any member continuing in service between age 65 and 70.

12.0503: Effect on Retirement Benefits

The retirement allowance of a member continuing in service between age 65 and 70 shall be based upon the average annual rate of regular compensation, which may include regular compensation received between age 65 and 70, the age of the member at retirement and the amount of creditable service earned to the date of retirement.

12.0604: Continuation of Service After Age 70

Members who have continued in service between age 65 and 70 and who elect to continue in service after age 70 are subject to the provisions of 840 CMR 11.00.

REGULATORY AUTHORITY

840 CMR 12.00: M.G.L. c. 7, § 50; c. 32, § 21.